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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/864,478   | 05/23/2001  | Scott C. Miller      | 2171A               | 2993             |
| 7590 12/01/2004  |             |                      | EXAMINER            |                  |
| Milliken & Company<br>P.O. Box 1927<br>Spartanburg, SC 29304 |             |                      | JUSKA, CHERYL ANN   |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 1771                |                  |

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |   |  |
|------------------------------|-------------------------------|---|--|
| <b>Office Action Summary</b> | Application No.<br>09/864,478 | Applicant(s)<br>MILLER ET AL. <span style="float: right;">7A</span> |  |
|                              | Examiner<br>Cheryl Juska      | Art Unit<br>1771  |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2001.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12, 14-16, 22, 23, 26 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 14-16, 22, 23, 26, and 28-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed September 16, 2004, has been entered. Claims 1-11, 13, 17-21, 24, 25, and 31-161 are cancelled, while claims 12, 14-16, 22, 23, and 26 have been amended as requested. Thus, the pending claims are 12, 14-16, 22, 23, 26, and 28-30.
2. Said amendment is sufficient to overcome the objection to claim 16 as set forth in section 3 of the last Office Action. Additionally, the cancellation of claims 140 and 144-146 renders moot the rejection set forth in section 5 of the last Office Action.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 12, 14-16, 22, 23, 26, and 28-30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins '857 or Higgins '968 in view of EP 048 986 issued to Porter et al. and in further view of EP 309 816 issued to Turner et al. for the reasons of record.

### ***Response to Arguments***

5. Applicant's arguments filed with the September 16, 2004 amendment have been fully considered but they are not persuasive. Applicant traverses the above rejection by asserting that the prior art teaches carpet tiles having polyurethane foam backings having higher densities and basis weights (i.e., mass per unit area) than presently claimed. Said argument is unpersuasive

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since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. Decreasing a foam weight and/or density would produce a cheaper, lighter weight carpet tile. One skilled in the art would readily recognize this relationship. Additionally, it is argued that criticality for the claimed ranges has not been established. As such, said ranges would have been readily obvious to one skilled in the art. "The normal desire of scientists or artisans to improve upon what is generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages." *In re Peterson*, 65 USPQ2d 1379. Therefore, the above rejection is maintained.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

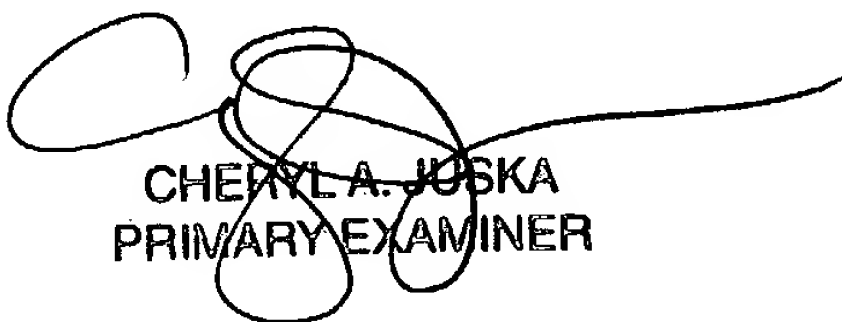
7. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER